

HOUSE BILL NO. 546

INTRODUCED BY D. GALLIK

A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING AND REVISING THE TESTS FOR MODIFICATION OF MAINTENANCE AND CHILD SUPPORT DECREES; AND AMENDING SECTION 40-4-208, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 40-4-208, MCA, is amended to read:

"40-4-208. Modification and termination of provisions for maintenance, support, and property disposition. (1) Except as otherwise provided in 40-4-201(6), a decree may be modified by a court as to maintenance or support only as to installments accruing subsequent to actual notice to the parties of the motion for modification.

(2) (a) Except as provided in 40-4-251 through 40-4-258, whenever the decree proposed for modification does not contain provisions relating to maintenance or support, modification under subsection (1) may only be made within 2 years of the date of the decree.

(b) ~~Except as provided in 40-4-251 through 40-4-258, whenever~~ If the decree proposed for modification contains provisions relating to ~~maintenance or~~ child support, modification under subsection (1) may only be made:

(i) upon a showing of ~~changed circumstances so substantial and continuing as to make the terms unconscionable~~ a substantial change in circumstances of the child or a parent;

(ii) upon written consent of the parties; or

(iii) upon application by the department of public health and human services, ~~whenever~~ if the department of public health and human services is providing services under Title IV-D of the federal Social Security Act. The support obligation must be modified, as appropriate, in accordance with the guidelines promulgated under 40-5-209. ~~Except as provided in 40-4-251 through 40-4-258, a modification under this subsection may not be made within 12 months after the establishment of the order or the most recent modification.~~

(c) The nonexistence of a medical support order, as defined in 40-5-804, or a violation of a medical support order justifies an immediate modification of child support in order to:

- 1 (i) provide for the actual or anticipated costs of the child's medical care;
- 2 (ii) provide or maintain a health benefit plan or individual health insurance coverage for the child;
- 3 or
- 4 (iii) eliminate any credit for a medical support obligation when it has been permitted or used as a
- 5 credit in the determination of the child support obligation.
- 6 (d) Except as provided in 40-4-251 through 40-4-258, if the decree proposed for modification
- 7 contains provisions relating to maintenance, modification under subsection (1) may only be made:
- 8 (i) upon a showing of changed circumstances so substantial and continuing as to make the terms
- 9 unconscionable;
- 10 (ii) upon written consent of the parties; or
- 11 (iii) upon application by the department of public health and human services if the department of
- 12 public health and human services is providing services under Title IV-D of the federal Social Security Act.
- 13 Except as provided in 40-4-251 through 40-4-258, a modification under this subsection (2)(d) may not
- 14 be made within 12 months after the establishment of the order or the most recent modification.
- 15 (3) The provisions as to property disposition may not be revoked or modified by a court except:
- 16 (a) upon written consent of the parties; or
- 17 (b) if the court finds the existence of conditions that justify the reopening of a judgment under the
- 18 laws of this state.
- 19 (4) Unless otherwise agreed in writing or expressly provided in the decree, the obligation to pay
- 20 future maintenance is terminated upon the death of either party or the remarriage of the party receiving
- 21 maintenance.
- 22 (5) Provisions for the support of a child are terminated by emancipation of the child or the child's
- 23 graduation from high school if the child is enrolled in high school, whichever occurs later, but in no event
- 24 later than the child's 19th birthday, unless the termination date is extended or knowingly waived by
- 25 written agreement or by an express provision of the decree. Provisions for the support of a child do not
- 26 terminate upon the death of a parent obligated to support the child. When a parent obligated to pay
- 27 support dies, the amount of support may be modified, revoked, or commuted to a lump-sum payment, to
- 28 the extent just and appropriate in the circumstances.
- 29 (6) The decree may be modified, as provided in 40-4-251 through 40-4-258, for failure to disclose
- 30 assets and liabilities."

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